
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

EGLAEL SOTO #26249-078

§

versus

§

UNITED STATES OF AMERICA

§

CIVIL ACTION NO. 4:19-CV-865
CRIMINAL ACTION NO. 4:17-CR-198(2)

MEMORANDUM OPINION AND ORDER

Movant Eglael Soto filed the above-styled and numbered Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. On June 2, 2023, with the assistance of counsel, Movant filed “Petitioner Soto’s Motion to Withdraw Her Amended Petition to Vacate and Set Aside the Judgment of Conviction” (#41). Movant wishes to voluntarily dismiss her § 2255 motion, and Respondent does not oppose such withdrawal.

Voluntary dismissals are governed by Rule 41 of the Federal Rules of Civil Procedure. Rule 41(a)(1)(A) that provides, in pertinent part, the movant “may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” “Unless the notice...states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 41(a)(1)(B). If no answer or motion for summary judgment has been filed, the notice of dismissal is self-effectuating and terminates the case in and of itself; no order or other action of the District Court is required. *In re Amerijet Int’l, Inc.*, 785 F.3d 967, 973 (5th Cir. 2015) (per curiam). In the present case, however, an answer was filed. “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.” Fed. R. Civ. P. 41(a)(2). The Court finds that Movant’s unopposed voluntary motion to withdraw the case should be granted.

Accordingly, it is **ORDERED** that “Petitioner Soto’s Motion to Withdraw Her Amended Petition to Vacate and Set Aside the Judgment of Conviction”(#41) is **GRANTED** pursuant to Fed. R. Civ. P. 41(a)(2), and the case is **DISMISSED** without prejudice. All motions by any party not previously ruled upon are **DENIED**.

Signed this date

Jun 15, 2023



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE